

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 51 of 2013

Santosh S/o Firtudas Manikpuri Aged About 28 Years R/o Vill. Nardha, thana Bilaigarh, Dist. Balodabazar, Bhatapara Chhattisgarh.

---- Appellant

Versus

State of Chhattisgarh S/o Through The P.S. Bilaigarh, Dist. Balodabazar-Bhatapara Chhattisgarh.

---- Respondent

For appellant : Mr. Neelkanth Malavia, Advocate.

For State : Mrs. Shubha Shrivastava, P.L. for the State.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

29/01/2020

1. This appeal is preferred against the judgment dated 31st of December, 2012, passed by Second Additional Sessions Judge, Balodabazar, District- Raipur (Now District- Balodabazar-Bhathapara) (C.G.) in Sessions Case No.59/2012, wherein the said Court convicted the appellant for charge under Sections 376(1) of Indian Penal Code, 1860 and sentenced him to undergo R.I. for 10 years and fine of Rs. 1000/- with default stipulations.
2. In the present case, prosecutrix is (PW-1). As per allegation the appellant made physical relation forcibly with the prosecutrix and thereafter, she got conceived. The Matter was reported, investigated and Court convicted the appellant as mentioned above.
3. Learned counsel on behalf of appellant submits that the prosecutrix has not supported version of the prosecution and

there is no evidence to convict the appellant with crime in question. The trial court recorded finding against the settled principle of law. Finding of the trial Court is passed on imagination, which is not permissible under the law. The trial Court has not evaluated the evidence properly, therefore, finding of the trial Court is liable to be set-aside.

4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.
5. The question for consideration of this Court is whether the appellant committed sexual intercourse with the prosecutrix without her consent or against her will. Prosecutrix (PW-1) deposed before the trial Court that appellant did not commit any act against her. As per version of this witness one Kumar is the person who made physical relation with her. This witness has been subjected to leading questions by the prosecution side but fact remains that criminal act on the part of the appellant is not established.
6. Looking to the shaky evidence of the prosecutrix, offence of sexual intercourse is committed in secrecy, therefore, only person who can depose regarding incident is the prosecutrix. The trial Court recorded finding on the basis of statements of father and mother of the prosecutrix namely Bartulal (PW-2) and Bhuribai (PW-3). From the evidence of both witnesses, it is clear that earlier the prosecutrix was married with one

Konda and thereafter she is working in the house of one Poonaram Sahu. From her statement, it is not established that parents of the prosecutrix are the witness account to the incident. Their version is based on information supplied to them by the others. Therefore, their evidence is not dependable to record any conclusion against the appellant. In the present case, prosecutrix herself did not level any allegation against the present appellant. Therefore, finding recorded by the trial Court on the basis of other witnesses is not sustainable.

7. Accordingly, the appeal is allowed. The appellant is acquitted of the charge under Section 376(1) of IPC. His conviction and sentence is hereby set-aside. The appellant is reported to be in jail. He be set at liberty forthwith, if not required in any other case.

Sd/-
(Ram Prasanna Sharma)
Judge